



Special Education Advisory Committee

Policy 8265, Student Search and Seizures

Recommendations

Summary

March 3, 2021

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

Overview: Policy 8265, Student Search and Seizures

Virginia Code § 22.1-279.7. Guidelines for student searches.

The Board of Education shall develop, in consultation with the Office of the Attorney General, guidelines for school boards for the conduct of student searches, including random locker searches, voluntary and mandatory drug testing, and strip searches, consistent with relevant state and federal laws and constitutional principles.

School boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student searches that are consistent with the guidelines of the Board.

LCPS School Board Policy 8265 was previously updated by the school board December 12, 2011.

Summary of Concerns

Concern 1: Draft Policy 8265 affords less protections than the *Virginia School Search Resource Guide* published by the Virginia Department of Education (VDOE), October 2000.

https://www.doe.virginia.gov/boe/guidance/safety/school_searches.pdf

Concern 2: The draft policy does not address students with identified disabilities.

Concern 3: The draft policy does not address mental health impacts of searches and seizures.

Recommendations and Concerns

Recommendation 1: Add to A. 3. the following sections (c) and (d) to consider the psychological and disability impacts of the contemplated search and/or seizure.

Policy 8265 draft changes:

- 16 3. Whenever it appears that searching a student may be necessary, school
17 officials must examine their anticipated conduct carefully to determine:
18
19 a. Whether their plan of action actually amounts to a search because it
20 will intrude on a justified privacy expectation, and, if so,
21
22 b. What standards must be satisfied to make the search reasonable and
23 lawful under the Fourth Amendment.
24
- c. Whether their plan of action is justified considering the psychological effects of the search. Conscientious teachers and school administrators should always carefully consider the emotional well-being of the student and the risk that the discovery of items of personal hygiene, contraceptives, personal notes from friends, fragments of love poems, caricatures of school authorities, or other highly-personal items or implements might embarrass a sensitive adolescent.
- d. Whether their plan of action needs to be modified or specially designed to meet the individual needs of the student including consideration of the student's Behavior Intervention Plan (BIP), Individualized Education Program (IEP), Section 504 plan, and/or Child Study Plan, in consultation with the student's case manager.

Concerns:

- Nothing in the draft policy considers the effect of the search on the student.
- New section c. is derived from language in the VDOE guidelines that addresses considering the mental health impact of any search or seizure of personal items.
- New section d. reminds staff of their obligation to follow any applicable individualized plans, consider the individualized disability needs of the student, and to modify their approach as necessary based on the student's individualized needs.

Recommendation 2: Add new Section H.

H. Prior Notification and Teaching

Absent an exigent circumstance, staff shall take appropriate steps to prepare the student for any search and/or seizure prior to it. This new section shall include:

1. What is being searched;
2. Why it is being searched;
3. What is the expectations of the student and cooperation with the search;

4. Students shall be given the ability to ask questions and have them answered; and
5. Students shall be allowed to call parent/guardians.
6. For students with a BIP, IEP, Section 504 plan, and/or Child Study Plan, these shall be taught in consultation with the student's case manager.

Concerns:

- The draft policy does not prepare students for a search or seizure of personal items, teach them what is expected of them in that process, or considers their individualized needs related to a disability.
- Providing a student with the handbook does not take into account any reading or cognitive impairments.

Recommendation 3: Replace Line 211-217 H. Consent with the VDOE's Language

Policy 8265 draft changes:

211 H. Consent. School authorities **should**, but are not required to, ask for permission of
212 the student to conduct a search.. The student's consent should be given willingly, **without**
213 **undue intimidation or influence**, and with knowledge of the meaning of the consent. The
214 student may withdraw the consent at any time during the search. If reasonable suspicion
215 existed at the inception, however, then the search may continue despite the withdrawal of
216 consent. Refusal to consent will not result in disciplinary action, but refusal to cooperate
217 with a search may result in disciplinary action for the refusal to cooperate.

VDOE Consent Search Language (page 8):

CONSENT SEARCHES

A school official may ask for permission to conduct a search, even if the official does not have reasonable grounds to believe that the search would reveal evidence of an offense/ infraction. A consent search of a student exists when a student grants the school official permission to search. A student's consent is valid only if given willingly and with knowledge of the meaning of consent. School officials have the burden of proving that the search was voluntary and knowing and t this can be difficult to do. Best practice is to obtain the consent in writing using a form on which the student expressly acknowledges that consent was given voluntarily and with knowledge. A student's refusal to give permission may not be considered as evidence of guilt.

Even when consent is given, it may be terminated at any time requiring the search to stop immediately. Note, however, that if the school official already has reasonable suspicion to believe that evidence of an offense/infraction will be found in a particular place, school officials need not rely on consent being given and may conduct a search of that location even over a student's objection. School officials must be prepared to document all aspects of obtaining permission to search.

Concerns with Line 211 -217 H. Consent

- Minors and/or persons with certain disabilities cannot provide consent;

- Requesting consent under necessarily coercive circumstances;
- Requesting consent and proceeding regardless of the denial of consent (“no means no”);
- Punishing students if they are not properly prepared and they are not “cooperative”;
- Why are searches being conducted if there is not even “reasonable suspicion”?

Recommendation 4: Add new Line 271. New Section P. Post Search/Seizure Actions and move existing P. Data Collection to New P. Section 2.

Policy 8265 draft changes:

271 P. Data Collection. LCPS will develop a system to document all student searches. Data
272 will be collected and reviewed annually at the school and division level.

P. Post Search/Seizure Actions

1. Notification and Teaching:
Consider the psychological effects of the search and determine what additional teaching and/or mental health supports should be provided to the student.
 - a. The school social worker or the school psychologist shall be consulted.
 - b. For students with a BIP, IEP, Section 504 plan, and/or Child Study plan, the case manager shall also be consulted.
2. Data Collection and Reporting
 - a. Existing content move here: P. Data Collection.
 - b. For students with an IEP, the Office of Special Education shall be notified,
 - c. For students with a Section 504 plan, the Division 504 Coordinator shall be notified.
 - d. The Director of Equity shall review the incident data no less than annually.

SEAC Membership Vote

SEAC Membership Vote on Recommendations